constitute the approval required under Section 222(c)(1). If the Commission were to decide, however, that a notice and opt out procedure is appropriate under Section 222(c)(1), a BOC securing such approval for its own use of CPNI would have to provide the same CPNI to any competitor that could prove that it had sent a similar notice to the same customer and had received no disapproval within a certain period of time.

5. If sections 222(c)(1) and 222(c)(2) require customer approval but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must each carrier including interexchange carriers and independent LECs disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units?

For the reasons discussed above, and with the same qualifications, the answer is the same as the answer to Question 4, except that Section 272 does not apply.

6. Must a BOC that solicits customer approval whether oral, written, or opt-out, on behalf of its section 272 affiliate also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated entities when it provides such a service for its section 272 affiliates? If so, what specific steps if

any must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 272 affiliate over unaffiliated entities? If the customer approves disclosure to both the BOC's section 272 affiliates and unaffiliated entities must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 272 affiliates?

MCI takes no position as to whether Section 272 requires a BOC that solicits customer approvals for its use of their CPNI to provide "approval solicitation services" to unaffiliated entities. Certainly, however, if a customer approves disclosure to both the BOC's separate affiliate and unaffiliated entities, Section 272(c)(1) requires the BOC to provide the customer's CPNI to the unaffiliated entities on the same rates, terms and conditions, including service intervals, as it provides the CPNI to its Section 272 affiliate.

7. If under sections 222(c)(2), and 272(c)(1), a BOC must not discriminate between its section 272 affiliates and non-affiliates with regard to the use, disclosure, or the permission of access to CPNI what is the meaning of section 272(g)(3), which exempts the activities described in sections 272(g)(1) and 272(g)(2) from the nondiscrimination obligations of section

272(c)(1)? What specific obligations with respect to the use, disclosure, and permission of access to CPNI do sections 222(c)(1) and 222(c)(2) impose on a BOC that is engaged in the activities described in sections 272(g)(1) and 272(g)(2)?

Once a BOC obtains in-region authority, it may jointly market its affiliate's interLATA service with its own local service, and, under Section 272(g)(3), such joint marketing is not subject to the nondiscrimination provision of Section 272(c)(1). Section 272(g)(3), however, does not make Section 272(c)(1) inapplicable to the BOCs' use or disclosure of CPNI in the course of joint marketing. CPNI can certainly be used for joint marketing, but Section 272(g)(3)'s limited exemption for joint marketing from the nondiscrimination requirement of Section 272(c)(1) should not be extended to immunize every activity that might be used for joint marketing.

Section 272(g)(3) was obviously meant to exempt BOCs from having to offer joint marketing services on a nondiscriminatory basis to other IXCs. That common sense exemption has no applicability to other facets of BOC monopoly operations that might play a role in joint marketing but must be made available to all competitors on a nondiscriminatory basis. For example, the services that are being jointly marketed are not themselves freed of the restrictions of Section 272(c)(1) by Section 272(g)(3). Similarly, there is no reason to free CPNI and its separate requirements in Section 222 from the nondiscrimination

provisions of Section 272(c)(1) whenever it might be used in conjunction with joint marketing. Having to disclose CPNI to unaffiliated entities on the same basis as to a separate affiliate hardly constitutes being forced to provide marketing services to unaffiliated entities, and it is only the latter that Section 272(g)(3) should prevent.

Moreover, Sections 201(b) and 202(a), which are not affected by the limited exemption in Section 272(g)(3), are also applicable to the BOCs' use or disclosure of CPNI for joint marketing purposes and prohibit, in circumstances where disclosure is not precluded by Section 222, any withholding of CPNI from other entities that inhibits consumer choice or for anticompetitive purposes. Again, the only conceivable purpose for such withholding, while the BOC uses the same CPNI under the same circumstances in its joint marketing, would be to unreasonably restrain competition. Moreover, Section 601(c)(1) states that the provisions of the 1996 Act "shall not be construed to modify, impair, or supersede Federal ... law unless expressly so provided...." Thus, nothing in the 1996 Act, including Section 272(g)(3), modifies or supersedes Sections 201(b) and 202(a) of the Communications Act, which prohibit anticompetitive manipulation of CPNI.

Accordingly, to summarize the CPNI requirements governing BOC joint marketing, a BOC may not use CPNI derived from its provision of local service to jointly market local and interLATA service without customer approval under Section 222(c)(1), nor

may it disclose such CPNI to its affiliate for the same purpose without such approval. Moreover, if it does disclose or use CPNI for such purposes with customer approval under Section 222(c)(1), it must disclose CPNI to any other entity that can demonstrate similar customer approval.

8. To what extent is soliciting customer approval to use disclose, or permit access to CPNI an activity described in section 272(g)? To the extent that a party claims that CPNI is essential for a BOC or section 272 affiliates to engage in any of the activities described in section 272(g), please describe in detail the basis for that position. To the extent that a party claims that CPNI is not essential for a BOC or section 272 affiliate to engage in those activities please describe in detail the basis for that position.

As explained above, activities related to CPNI should not be considered coterminous with joint marketing. Soliciting customer approval under Section 222(c)(1) hardly constitutes joint marketing. CPNI may well be very useful for joint marketing. Indeed, that is why the manipulative denial of access to CPNI violates Sections 201(b) and 202(a) of the Act, irrespective of whether Section 272(c)(1) applies to such disclosure in the joint marketing context. As explained above, however, the usefulness of CPNI to joint marketing should not immunize the use or disclosure of CPNI for joint marketing from the nondiscrimination

requirement of Section 272(c)(1).

9. Does the phrase "information concerning [a BOC's] provision of exchange access" in section 272(e)(2) include CPNI as defined in section 222(f)(1)? Does the phrase "service...concerning [a BOC's] provision of exchange access" in section 272(e)(2) include CPNI-related approval solicitation services? If such information or services are included, what must a BOC do to comply with the requirement in section 272(e)(2) that a BOC "shall not provide any...services... or information concerning its provision of exchange access to [its affiliates] unless such ... services ... or information are made available to other providers of interLATA services in that market on the same terms and conditions"?

Just as CPNI is included in the "provision ... of ... information" addressed in Section 272(c)(1), it is also covered by the phrase "information concerning [a BOC's] provision of exchange access" in Section 272(e)(2), referenced in the answer to Question 6 above. With regard to the use or disclosure of CPNI, compliance with Section 272(e)(2) requires the same conduct as compliance with Section 272(c)(1).

10. Does a BOC's seeking of customer approval to use disclose or permit access to CPNI for or on behalf of its section 272 affiliates constitute a "transaction" under section 272(b)(5)? If so, what steps if any must a BOC and its section 272

affiliates take to comply with the requirements of section 272(b)(5) for purposes of CPNI?

MCI takes no position on this issue at this time.

11. Please comment on any other issues relating to the interplay between sections 222 and 272.

One other issue that touches on the relationship between Sections 222 and 272 is the effect of Section 222 on Section 22.903(f) of the Commission's Rules, governing the provision of "customer proprietary information" by a BOC to its cellular subsidiary. As mentioned above, MCI explained in its comments that, given the competitive and privacy goals of Section 222, cellular and other CMRS should be treated as a "floating" service category for purposes of applying Section 222. In other words, in the case of an IXC, CMRS would be considered to be in the same category as its interLATA service, and CPNI derived from either category of service could be used to market the other without customer approval. Similarly, in the case of a BOC, CMRS would be considered to be in the same category as its local service, and CPNI derived from either of those categories could be used by the BOC or its affiliate to market the other without customer approval. Thus, a BOC is not precluded by Section 222 from using its local service CPNI to market its affiliate's cellular services in the absence of customer approval.

Construed in this manner, Section 222 is not inconsistent with Section 22.903(f) of the Commission's Rules. A BOC may provide CPNI to its cellular subsidiary for marketing purposes without customer approval, but that does not logically preclude application of the nondiscrimination requirements of Section 22.903(f). Any such CPNI used by the BOC's subsidiary must be made publicly available on the same terms and conditions. As mentioned above, Section 601(c)(1) states that the provisions of the 1996 Act do not impliedly supersede or modify any existing "Federal" law. "Federal law" in that context includes pre-existing Commission regulations.[23] Section 222 does not preclude disclosure of CPNI to others under these circumstances, since, under Section 222(c)(1), such disclosure is "required by law" -- namely Section 22.903(f) of the Rules. Thus, there is no basis to assume that Section 22.903(f) of the Rules is displaced or modified in any way by Section 222 of the Act.

The consistency of Section 22.903(f) of the Rules with the provisions of the 1996 Act is reinforced by the nondiscrimination requirements of Section 272(c)(1). Section 22.903(f) of the Rules dovetails closely with Section 272(c)(1), since both require BOCs to apply the same procedures relating to CPNI with regard to their affiliates and to all others. Thus, BOCs and other Tier 1 LECs should make CPNI and other information they share with their cellular affiliates available to all others at

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[23] Report and Order, Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, FCC 96-288 (released July 1, 1996) at ¶ 29.

reasonable rates, terms and conditions, including reasonably frequent updates and through flexible information transfer interfaces meeting industry standards.

Moreover, if the Commission decides in WT Docket No. 96-162 to eliminate the structural separation requirement, all of the nonstructural safeguards of Section 22.903 should continue to apply to all BOCs and Tier 1 LECs. That includes the CPNI nondiscrimination requirements of Section 22.903(f). Thus, any CPNI used by a BOC in connection with its cellular service would have to be made publicly available.

MCI also wishes to take this opportunity to correct the record in one respect. MCI asserted in its comments that "PIC freeze" information[24] constitutes CPNI. Upon further consideration, however, MCI has concluded that such information is not CPNI, since it does not relate to the "quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer...."[25] Rather, a PIC-freeze, in and of itself, indicates only the "type" of service that a customer does not want (i.e., any carrier other than the one to which the customer is now presubscribed). Which carrier a customer has chosen as its presubscribed carrier, on the other hand, is CPNI, since that does indicate the "type ...

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[24] "PIC-freeze" information is information in a LEC's records indicating that a subscriber has directed the LEC not to change the customer's presubscribed service from a particular carrier unless the customer takes special steps to effectuate a change.

[25] Section 222(f)(1)(A).

of a telecommunications service subscribed to by any customer."

It should be noted, however, that a LEC's practices with regard to PIC-freeze information are subject to Sections 201(b) and 202(a) of the Act, similarly to its practices with regard to CPNI. Thus, a LEC may not reveal or use PIC-freeze information for its own interLATA marketing efforts while denying such data to competitors, since such manipulation of information would be an unreasonable and anticompetitive practice and discriminatory. Similarly, a BOC's practices with regard to PIC-freeze information are subject to the nondiscrimination requirement of Section 272(c)(1).

12. Please propose any specific rules that the Commission should adopt to implement section 222 consistent with the provisions of section 272.

As indicated in the response to Question 1, the Commission, in its order implementing Section 222, should make it clear that a BOC that has refused or refuses to disclose local service CPNI to another entity where Section 222 allows such disclosure -- e.g., where there is oral customer approval or where the CPNI is necessary to initiate service -- must continue to follow the same approach with regard to CPNI disclosure to its own affiliates. Thus, a BOC that has previously refused to disclose CPNI to unaffiliated entities in such situations must not be allowed to disclose CPNI to its own affiliates in the same situations, even

if it were willing to alter its procedures to disclose CPNI to all others on the same basis. Moreover, the same rule should apply to a BOC's own use of local service CPNI to market its affiliate's interLATA services. Otherwise, a BOC could make an end run around any prophylactic rule by impeding other IXCs' use of CPNI prior to its entry into in-region interLATA service and then giving its own affiliate the benefit of freer use of the same CPNI in marketing the affiliate's services.

MCI also believes that whatever rules are fashioned in this proceeding, including rules relating to the relationship of Sections 222 and 272, may be frustrated without a general database "cleansing" rule. The BOCs have made it fairly clear in their filings in this docket as well as in their dealings with MCI that they do not intend to wait for final resolution of these issues to implement their interpretations of Section 222. Most ominously, they have requested that the rules established in this proceeding constitute merely non-binding "safe harbor" regulations and that any alternative application of Section 222 in good faith also be permitted.[26] Given the vast CPNI resources at their disposal, it must be assumed that CPNI has already been loaded into their marketing databases in preparation for in-region interLATA marketing.

Accordingly, in its order establishing rules implementing Section 222, the Commission should require all carriers to purge all databases, related to or used in marketing, of all CPNI and

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[26] See BellSouth Comments at 4-6; Ameritech Comments at 2.

to create systems of the type discussed in paragraphs 35 and 36 of the NPRM to ensure that CPNI is not used in a manner that violates Section 222. As to the latter, MCI proposed in its comments that the database safeguards now in place for CPNI under Computer III, such as database access passcodes, be extended to cover all uses of the BOCs' CPNI.[27] Such safeguards, however, will be useless if CPNI data that has already been disseminated throughout the BOCs' data systems is allowed to remain there. Thus, BellSouth's suggestion to eliminate the Computer III database restrictions[28] must be rejected, since those restrictions are needed now more than ever and should be applied broadly to cover all uses of CPNI and to facilitate whatever purging is necessary.

13. To what extent if any, does the term "basic telephone service information," as used in section 274(c)(2)(B) and defined in section 274(i)(3), include information that is classified as CPNI under section 222(f)(1)?

Given the similarity of the definition of "basic telephone service information" to the definition of CPNI in Section 222, the former appears to include the latter.

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[27] MCI Comments at 17-19.

[28] Ex parte letter from Ben G. Almond, BellSouth, to William F. Caton, FCC, dated January 14, 1997, Attachment at 3.

14. Does section 274(c)(2)(A) mean that a BOC that is providing "inbound telemarketing or referral services related to the provision of electronic publishing to a separated affiliate electronic publishing joint venture or affiliate may use, disclose, or permit access to CPNI in connection with those services only if the CPNI is made available on nondiscriminatory terms to all unaffiliated electronic publisher who have requested such services? If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(A) impose on a BOC with respect to the use disclose or permission of access to CPNI?

As indicated in the response to Question 7, marketing should not be considered to automatically include the use of CPNI in connection with such marketing. Thus, the nondiscrimination requirement of Section 274(c)(2)(A) applicable to "inbound telemarketing or referral services related to the provision of electronic publishing" does not implicate the use or disclosure of CPNI under Section 222. As explained in the response to Question 1, however, the CPNI disclosure practices of BOCs and all other carriers are subject to Sections 201(b) and 202(a) of the Act. Those provisions require that whatever CPNI disclosure practices are followed by a BOC vis-a-vis a separated affiliate, electronic publishing joint venture or affiliate must also be followed in its dealings with all other electronic publishers,

for the reasons explained in the response to Question 1.

It should be noted that since electronic publishing is an information service,[29] such services should not be treated as part of the same service bucket as either local or interLATA telecommunications services. As MCI explained in its Reply Comments, at 4-5, absent customer approval or one of the other exceptions in Section 222, CPNI may only be used to provide the "telecommunications service" from which such CPNI is derived. Since information services are not telecommunications services, electronic publishing cannot be considered the same service from which any CPNI is derived. Thus, customer approval or some other exception is a prerequisite for any carrier's use or disclosure of CPNI for electronic publishing purposes.

Some of the BOCs have developed a tortuous theory that information services are "used in the provision of" telecommunications services and thus fall within the permitted use of CPNI set forth in Section 222(c)(1)(B). That, of course, makes no sense at all. It is the opposite that is the case: telecommunications services are used in the provision of information services. Accordingly, local or interLATA service CPNI cannot be used or disclosed for information service purposes in the absence of customer approval or other exception in Section 222.

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[29] Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, FCC 97-35 (released Feb. 7, 1997), at ¶ 110.

MCI takes no position at this time on Questions 15-26, except that the nondiscrimination principles outlined above apply generally to the Section 274 context as well as to the Section 272 context.

Conclusion

For the reasons set forth above, the Commission should establish rules to implement Section 222 of the Act in the manner proposed herein and in MCI's comments, in order that the competitive purposes of that provision be fully realized.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that on this 17Th day of March, 1997, copies of the foregoing "FURTHER COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION" were served by first-class U.S. mail, postage prepaid, to the following persons at the adresses listed below.

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